

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MANUEL MANZO,
Petitioner,

v.

KOENIG,
Respondent.

Case No. [21-cv-03538-WHO](#) (PR)

ORDER OF DISMISSAL

This federal action was filed as a 28 U.S.C. § 2254 petition for writ of habeas corpus, that is, as a challenge to the lawfulness or duration of petitioner Manuel Manzo's incarceration. A review of the petition, however, shows that Manzo challenges the conditions of his confinement (such as inadequate mental health and medical care). Because success on such claims will not affect the length of his incarceration, his claims are not the proper subject of a habeas action. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (habeas corpus action proper mechanism for challenging "legality or duration" of confinement).

In light of this, the Court issued an order to Manzo on September 10, 2021, requiring him to file a response by November 1, 2021 that indicated whether he wished "(i) the Court to convert this § 2254 habeas action into one filed under 42 U.S.C. § 1983; or (ii) continue to pursue the action as one filed under 28 U.S.C. § 2254." (Dkt. No. 7 at 2.) The order warned that the lawsuit would be dismissed for failure to prosecute if there was no response.


There has been no response of any kind to the order. Accordingly, this federal habeas action is **DISMISSED** (without prejudice) for failing to respond to the Court's

1 order and for failing to prosecute, *see* Federal Rule of Civil Procedure 41(b). Because this
2 dismissal is without prejudice, petitioner may move to reopen. Any such motion must
3 have the words MOTION TO REOPEN on the first page and the motion must be
4 accompanied by a written indication whether petitioner wants to pursue Option (1) or
5 Option (2).

6 The Clerk shall enter judgment in favor of respondent and close the file.

7 **IT IS SO ORDERED.**

8 **Dated:** November 29, 2021

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10 WILLIAM H. ORRICK
11 United States District Judge
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